

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/20/2009 has been entered.

### ***Notice of Amendment***

2. In response to the amendment filed on 02/20/2009, amended claim(s) 1, 4, 19, 20, 31, and 32, and new claims 33-39 is/are acknowledged. The current objections of the claim(s) is/are *withdrawn*. The following is/are are set forth:

### ***Information Disclosure Statement***

3. The information disclosure statement(s) (IDS) submitted on 06/10/2009 and 11/13/2008 is/are acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement(s).

## **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Giordana Belenchia on 6/11/09.

The application has been amended as follows:

**Claim 32 should read: (Cancelled).**

***Allowable Subject Matter***

5. Claims 1-16, 19-25, 31, and 33-39 are allowed.

6. Claim 1 is allowable. Claim 12, previously withdrawn from consideration as a result of a restriction requirement, contains all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement between inventions, as set forth in the Office action mailed on 1/15/08, is hereby withdrawn** and claim 12 hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer

applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

7. The following is an examiner's statement of reasons for allowance: the prior art does not disclose, teach, and/or fairly suggest a tissue extraction and maceration device comprising *inter alia*: a rotatable shaft disposed in an outer tube having a tissue harvesting tip and a cutting member disposed in the outer tube adjacent a sizing screen to macerate tissue in order for it to pass through openings of the sizing screen, or a rotatable shaft disposed in an outer tube having a tissue harvesting tip exposable from the tube by using a trigger on a handle to harvest tissue through an open distal end of the outer tube and a cutting member fully disposed in the outer tube when the tissue harvesting tip is exposed from the tube to macerate tissue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736